

APPENDIX D

ADDITIONAL FEDERAL PESTICIDE LAWS & FEDERAL RECORD-KEEPING REQUIREMENTS

In addition to the laws and regulations discussed in Chapter 2, there are other federal statutes that affect the use, storage, transport, disposal, and marketing of pesticides. Some of these laws and regulations fall under the jurisdiction

of the U.S. Environmental Protection Agency; others are the responsibility of other federal agencies. Further WPS and record-keeping requirements are also discussed here to supplement the discussion in Chapter 2.

WORKER PROTECTION STANDARD (WPS)

The U.S. Environmental Protection Agency's Worker Protection Standard, as amended in 1995, is a regulation aimed at reducing the risk of pesticide poisonings, injuries, and exposure to workers and pesticide handlers in agriculture. The WPS requires employers to provide agricultural workers and pesticide handlers with protections against possible harm from pesticides. Persons who must comply with these requirements include owners/operators of agricultural establishments and owners/operators of commercial businesses that are hired to apply pesticides on agricultural establishments or to perform crop-advising tasks on such establishments. The WPS helps protect workers and pesticide handlers who are agricultural employees on farms and in forests, nurseries, and greenhouses from occupational exposure to agricultural pesticides.

Pesticide handlers

Pesticide handlers under WPS are those individuals who mix, load, or apply

agricultural pesticides; clean or repair pesticide application equipment; or assist with the application of pesticides.

Agricultural workers

Agricultural workers under WPS are those individuals (e.g., weeders, irrigators, pruners, and harvesters) who perform tasks related to the cultivation and harvesting of plants on farms or in greenhouses, nurseries, or forests. Workers include anyone employed for any type of compensation (including self-employed) to do tasks—such as carrying nursery stock, repotting plants, or watering—related to the production of agricultural plants on an agricultural establishment.

Agricultural workers do NOT include such employees as office staff, truck drivers, mechanics, and any other workers not engaged in worker/handler activities.

The WPS requires agricultural employers to provide:

Personal protective equipment—

Personal protective equipment must be provided and maintained for handlers and early-entry workers.

Notification of workers—

Workers must be notified about treated areas so they may avoid inadvertent exposures.

Decontamination supplies—

Handlers and workers must have an ample supply of water, soap, and towels for routine washing and emergency decontamination.

Emergency assistance—

Transportation to a medical care facility must be made available if a worker or handler may have been poisoned or injured. Information must be provided about the pesticide to which the person may have been exposed.

Pesticide safety training and safety posters—

Training is required for all workers and handlers, and a pesticide safety poster must be displayed.

Access to labeling and site-specific information—

Handlers and workers must be informed of pesticide label requirements. Central posting of recent pesticide applications is required.

The WPS also establishes a restricted-entry interval (REI), which is the time immediately after a pesticide application during which an individual cannot enter the treated area. Each pes-

ticide that is registered for use on sites falling under the provisions of the WPS has an established REI that appears on the label. The REI is based on the toxicity classification of the pesticide.

The EPA has allowed for an exception to the WPS that permits workers, under specified conditions, to enter pesticide-treated areas during a restricted-entry interval (REI) to perform tasks that involve limited contact with pesticide-treated surfaces. This exception allows workers the flexibility during an REI to perform limited-contact tasks that could not have been foreseen and which, if delayed, would cause significant economic loss. At the same time, the exception includes significant provisions to limit pesticide exposure and risk to employees performing limited-contact tasks. Check the WPS regulation for the provisions of the exception to allow limited-contact early-entry activities.

Pesticide labels contain specific information—under the section “Agricultural Use Requirements”—on compliance with the WPS. In addition to general information about compliance with the WPS, this section of the label contains specific information about the required personal protective equipment that must be worn, type of notification that must be given to workers, and the restricted-entry interval (REI) for that particular product. Further information on the WPS requirements can be obtained from www.epa.gov/pesticides.

FIELD SANITATION STANDARD

The Field Sanitation Standard is a 1987 Occupational Safety and Health Administration (OSHA) regulation. In general, it applies to agricultural employers who employ more than 10 field workers or who maintain a labor camp. The Field Sanitation Standard requires these employers to provide three things to their employees who are exposed to agricultural chemicals: toilet facilities, hand-washing facilities, and clean drinking water. The standard also requires the employers to inform each employee about the following good hygiene practices:

- Use the water and facilities provided for drinking, hand-washing, and elimination.
- Drink water frequently, especially on hot days.
- Urinate as often as necessary. Wash hands both before and after using the toilet.
- Wash hands before eating and smoking.

HAZARDOUS MATERIALS TRANSPORTATION UNIFORM SAFETY ACT (HMTUSA)

The Hazardous Materials Transportation Uniform Safety Act (HMTUSA, 1990) relates to transporting pesticides. Shipment of pesticides and other dangerous substances across state lines is regulated by the U.S. Department of Transportation (DOT). The DOT issues the rules for transporting these materials. If you ever transport pesticides between states, you should know that:

- The pesticides must be in their original packages. Each package must meet DOT standards.
- The vehicle must have a DOT-approved sign.
- The pesticides may not be hauled in the same vehicle with food or

feed products or with packaging material intended for use with such products.

- You must contact DOT immediately after each accident when someone is killed, when someone is injured badly enough to go to a hospital, or when damage is more than \$50,000.
- You must tell DOT about all spills during shipment.

Contact the state, tribal, or territorial DOT office for detailed information on which pesticides are listed as hazardous substances and what rules apply to them during transport.

HAZARD COMMUNICATION STANDARD (HCS)

Under the U.S. Department of Labor, the Occupational Safety and Health Administration (OSHA) is responsible for enforcing the provisions of the Hazard Communication Standard (HCS), better known as the Federal Worker Right-to-Know law. This law is designed to protect employees who handle, use, or may be exposed to hazardous chemicals (including pesticides) in the workplace as part of their normal job duties. With the exception of farms, the HCS covers all employers with one or more employees; farms employing the equivalent of 10 or more full-time employees are covered.

The requirements of the HCS fall into the following categories:

Chemical inventory—Employers must compile a list of all hazardous chemicals in their workplace.

Material safety data sheets—MSDS for each hazardous chemical in the workplace must be kept on file where employees can review them without having to ask permission.

Warning labels—Each container of hazardous chemical must be labeled, tagged, or marked with the identity of its

contents, appropriate hazard warnings for employee protection, and the name of the chemical manufacturer.

Training—Employers must conduct an information and training program for employees exposed to hazardous chemicals. This training must include a review of the HCS, where MSDS are filed and how to interpret the information on an MSDS, the health effects of the hazardous chemicals in the workplace, where personal protective equipment is kept and when it is used, employee work practices to minimize exposure to chemicals, and chemical spill response procedures.

Written Hazard Communication Program—The written program must include the policies and procedures used at the facility to ensure that the requirements of the HCS are met.

States, tribes, and territories often have their own worker right-to-know provisions, which may be more stringent than the federal HCS. Contact your state, tribal, or territorial authority about applicable requirements.

FEDERAL OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA)

The Occupational Safety and Health Act contains requirements for all employers to keep records of all work-related deaths, injuries, and illnesses. This law is administered by the U.S. Department of Labor. Employers must make periodic reports about any employee who seeks medical treat-

ments, loses consciousness, is restricted from work or motion, or transfers to another job. Employers do not have to report situations in which only first-aid treatment is required. In addition, this act requires investigation of employee complaints related to exposure to hazardous materials, including pesticides.

SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT (SARA TITLE III)

On October 17, 1986, the Superfund Amendments and Reauthorization Act (SARA), was signed into law. This act is administered by the US EPA and revises and extends the authorities established under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). Commonly known as Superfund, CERCLA provides authority for federal cleanup of uncontrolled hazardous waste sites and response to spills or accidental releases of hazardous substances. Title III of SARA, also known as the Emergency Planning and Community Right-to-Know Act of 1986, is intended to encourage and support emergency planning efforts at the state and local levels and to provide the public with information on potential chemical hazards present in their communities.

Title III is subdivided into three parts. Subtitle A establishes the framework for local emergency planning. Subtitle B provides the mechanism for community awareness of hazardous chemicals present in the community—i.e., it requires submission of material safety data sheets, emergency and hazardous chemical inventory forms, and toxic chemical release forms to state and local governments. Only those businesses regulated under the Occupational Safety and Health Administration (OSHA) are subject to the requirements of Subtitle B, whereas any person or business storing or using specific quantities of

certain chemicals must comply with the requirements of Subtitle A. (Note that agricultural operations, such as farms, are not exempt from the requirements of Subtitle A.) Subtitle C contains general provisions on trade secret protection, enforcement, and public availability of information.

Emergency Planning

The Environmental Protection Agency (EPA) has compiled a list of chemicals that could cause serious, irreversible health effects through accidental releases. These are designated “extremely hazardous substances.” Any facility (defined as “all buildings, equipment, structures, and other stationary items located on a single site or on contiguous or adjacent sites and owned or operated by the same person”) where an extremely hazardous substance is present in an amount in excess of the threshold planning quantity (TPQ) is required to notify your state's emergency response agency.

Emergency Release Notification

Associated with each designated extremely hazardous substance is a reportable quantity (RQ). This section of the regulation requires reporting of an accidental release (such as a spill) of any extremely hazardous substance if the release involves an amount equal to or greater than the RQ, and the release is not confined to the facility. Accidental spills and releases, such as those while

in transit are generally first reported to local emergency responders (i.e., state police, 911) before being reported to other state and local authorities.

Penalties

Any person who fails to comply with the requirements under this provision is subject to civil penalties of up to \$25,000 for each violation and up to

\$25,000 for each day during which the violation continues, in accordance with sections 325 (b)(1) and 25(b)(2) of the act. A person who knowingly and willfully fails to provide notice may, upon conviction, be fined up to \$25,000 or imprisoned for up to two years, or both. In the case of a subsequent conviction, he or she may be fined up to \$50,000 or imprisoned for up to 5 years, or both.

RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)

The U.S. Environmental Protection Agency regulates wastes under the Resource Conservation and Recovery Act (RCRA) also enacted in 1976. The EPA issues a list of materials that are considered hazardous. The RCRA also applies to certain flammable, corrosive, reactive, or toxic wastes, even if they are not on the list. Therefore, some pesticides could be “regulated hazardous wastes” under the RCRA.

“Wastes” include unrinsed containers, excess pesticides and pesticide dilutions, and rinse water and wash water that contain a listed chemical and cannot be used. Triple-rinsed pesticide containers are not considered hazardous waste under the RCRA, and as a result,

they can be disposed of in sanitary landfills.

The RCRA regulates pesticide users who accumulate wastes of acutely toxic pesticides totaling 2.2 pounds or more per month or wastes of any RCRA-regulated pesticides totaling 2,200 pounds per month. Any such user must register as a generator of hazardous waste, obtain an ID number from the EPA, and follow certain disposal requirements.

States, tribes, and territories often have their own hazardous waste laws, which may be more stringent than the RCRA. Contact your state, tribal, or territorial authority about applicable requirements.

FEDERAL AVIATION ADMINISTRATION

Application of pesticides from aircraft is regulated by the Federal Aviation Administration (FAA) and may be regulated by your state. The FAA judges both the flying ability of pilots

and the safety of their aircraft. FAA rules say, as FIFRA does, that an aerial applicator may not apply any pesticide except as the labeling directs.

FEDERAL TRADE COMMISSION ACT

The Federal Trade Commission Act (FTC), under Section 5 of the Act, prohibits unfair, misleading, or deceptive (unsubstantiated) advertising practices (similar to “claims differ” or misbranding violations under FIFRA but without product sales and distribution). In the past, the FTC has been concerned primarily with safety-related claims for pesticides that may lead consumers to believe that the pesticide is less hazardous than the toxic data

indicate or as indicated by the warning or precautionary statements (e.g., claims of absolute human or environment safety such as “safe,” “non-hazardous,” or “no danger”). The FTC handles claims that use dangling or incomplete safety comparisons that do not inform consumers or provide the basis of the comparison or the characteristics being compared (e.g., “safer,” “less toxic,” or “less hazardous”). The FTC is also concerned with claims that contradict or

are inconsistent with the label's safety instructions (e.g., "easy to use," when, in fact, the label contains lengthy and detailed use procedures, or "no special protective clothing needed," when the label warns the user to avoid contact with eyes or skin).

This act also gives the FTC authority over the language used by pest control businesses (e.g., structural and lawn and landscape) in their advertising and marketing programs regarding pest control services and the pesticides that may be used as part of the service.

RECORD-KEEPING REQUIREMENTS FOR COMMERCIAL APPLICATORS

Under FIFRA, Section 11 and 26(c), EPA requires commercial applicators to maintain records. Current federal regulations specify that commercial applicators must record information on the kinds, amounts, uses, dates, and places of applications of restricted-use pesticides. The pesticide regulatory authority for your area (i.e., EPA, other federal agencies, states, tribes, territories, or other regulatory agencies) may require that commercial applicators keep the following pieces of information on applications:

- The name and address of the person for whom the pesticide was applied.
- The location of the pesticide application.
- The pest being controlled.
- The crop, commodity, or site where the pesticide was applied.
- The date and time of each application.
- The trade name and EPA regis-

tration number of the pesticide applied.

- The amount of the pesticide applied and the percentages of active ingredient per unit of the pesticide used.
- The type and amount of pesticide disposed of, method of disposal, date of disposal, and location of disposal site.

Federal regulations require that records be retained for two years, and be made available to pesticide regulatory officials upon request. Related sections of FIFRA give the EPA the authority to inspect both the books and records and the establishments of commercial pesticide applicators.

States, tribes, territories, and other agencies often have their own record-keeping requirements for commercial applicators, which may be more stringent than federal standards. Contact your state, tribe, territory, or agency about applicable requirements.

FEDERAL PESTICIDE RECORD-KEEPING PROGRAM FOR PRIVATE APPLICATORS

The United States Department of Agriculture, Agricultural Marketing Service (USDA AMS) administers the federal Pesticide Record-Keeping Program, which requires all certified private applicators to keep records of their use of federally restricted-use pesticides for a period of two years.

The federal Pesticide Record-Keeping Program was authorized by the Food, Agriculture, Conservation, and

Trade Act of 1990, commonly referred to as the 1990 Farm Bill. Under this law, all certified private pesticide applicators who have no requirement through state regulations to maintain restricted-use pesticide records must comply with the federal pesticide record-keeping regulations. Certified private pesticide applicators who are required to maintain records of restricted-use pesticide applications under state regulations

will continue to keep their records as required by their state.

The pesticide record-keeping regulations require the certified private pesticide applicator to record the following within 14 days of the application:

- The brand or product name (trademark name) of the pesticide being used.
- The EPA registration number. The registration number is not the same as the EPA establishment number, which is also located on the label.
- The date of the pesticide application, including month, day, and year.
- The location of the restricted-use pesticide application (not the address of the farm or business). Options are by county, range, township, or section; identification system established by the USDA, such as plat IDs used by the Farm Service Agency (FSA) or the Natural Resources Conservation Service (NRCS); legal property description, as listed on the deed of trust or county/city records; or an applicator-generated identification system that accurately identifies the location of the application.
- Crop, commodity, stored product, or site being treated.
- Size of the area treated. Record this information in the unit of measure (such as acres, linear feet, bushels, cubic feet, number of animals, etc.) that is normally expressed on the label in reference to the application being made.
- The name of the private applicator performing and/or supervising the application.

- The certification number of the private applicator. If the name of the private applicator and the certification number are kept together, this information has to be listed only once. (Note: the name and certification number may be noted at the front of a record book if the same applicator is making the applications.)

If you apply restricted-use pesticides on the same day in a total area of less than 1/10 acre (e.g., spots treatments of noxious weeds), you are required to record the following:

- Date of application—month, day, and year.
- Brand or product number.
- EPA registration number.
- Total amount of pesticide applied.
- Location of the pesticide application, designated as “spot application,” and a short description.

The spot treatment provision *excludes greenhouse and nursery applicators*, who must keep all records required by the private applicator record-keeping law.

Attending licensed healthcare professionals or those acting under their direction, USDA representatives, and state regulatory representatives with credentials have legal access to the records. No standard federal form is required, so that pesticide record-keeping can be integrated into the applicator’s current record-keeping system.

If you do not comply with the record-keeping requirements, you may be fined up to \$550 for a first offense and not less than \$1,100 for any later offense (unless it is determined that you have made a good-faith effort to comply).

RECORD-KEEPING REQUIREMENTS UNDER THE WORKER PROTECTION STANDARD

The Worker Protection Standard (WPS) requires agricultural employers to make pesticide application infor-

mation available in a central location. The following information must be posted: the location and description

of the treated area; the product name and EPA registration number; the active ingredient and restricted-entry interval of the pesticide; and the time and date of application. Thus, pesticide applicators should provide such information to the agricultural employer of the establishment.

Though not required by federal law, applicators should consider maintaining application records for all pesticide applications, both general- and restricted-use. In addition, you should consider maintaining information on the weather conditions (i.e., temperature, wind speed, and wind direction) at the site of application, along with measures that may have been used to minimize spray drift. In addition to pesticide application records, applicators should consider keeping documentation on employee training in the use of pesticides. Though not required by federal law through the provisions of either FIFRA or the WPS, this documentation can help substantiate that employees received initial training on

the proper use of pesticides when they were hired. In the case of WPS, it will help document that the mandatory training requirements were satisfied. Information such as each employee's name, Social Security number, or work identification number, and the date the training was completed should be maintained as part of the training records. Having the employee sign and date the training record should also be considered to verify that he/she received the training. Another type of employee training record that should be considered is documentation on the training materials and sources of the materials that were used. This same documentation should be considered for the employee's initial pesticide training and any additional or updated pesticide training the employee may receive. As with pesticide application records, states, tribes, territories, and other agencies often have their own record-keeping requirements on employee training. Contact your state, tribe, territory, or agency about applicable requirements.